



LODI CITY COUNCIL

Carnegie Forum

305 West Pine Street, Lodi

AGENDA - SPECIAL MEETING

Date: April 12, 2004

Time: 4:30 p.m.

For information regarding this agenda please contact:

Susan J. Blackston

City Clerk

Telephone: (209) 333-6702

NOTE: All staff reports or other written documentation relating to each item of business referred to on the agenda are on file in the Office of the City Clerk and are available for public inspection. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. To make a request for disability-related modification or accommodation contact the City Clerk's Office as soon as possible and at least 24 hours prior to the meeting date.

A. Roll call

B. Regular Calendar

- B-1 Approve Special Allocation for expenses incurred by outside counsel relative to the Environmental Abatement Program litigation (\$196,951.05) (CA)
- B-2 Discussion and direction regarding Notice of Intention to Circulate Petition submitted March 30, 2004, to the Lodi City Clerk's Office by Elizabeth M. Fiske, Glenda Hesseltine, and Walter Pruss (CA)

C. Closed Session

- C-1 Actual Litigation: Government Code §54956.9(a); one case; City of Lodi, a California Municipal Corporation, and Lodi Financing Corporation, a California nonprofit corporation v. Lehman Brothers, Inc. and US Bank National Association, United States District Court, Eastern District of California, Case No. CIV. S-04-0606 MCE-KJM

D. Return to Open Session / Disclosure of Action

E. Adjournment

Pursuant to Section 54956.2(a) of the Government Code of the State of California, this agenda was posted at a place freely accessible to the public 24 hours in advance of the scheduled meeting.

Susan J. Blackston
City Clerk

****NOTICE:** Pursuant to Government Code §54954.3(a), public comments may be directed to the legislative body concerning any item contained on the agenda for this meeting before (in the case of a Closed Session item) or during consideration of the item.**



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Approval of Special Allocation for Expenses Incurred by Outside Counsel Relative to the Environmental Abatement Program Litigation.

MEETING DATE: April 12, 2004 Special City Council Meeting

PREPARED BY: Steve Schwabauer, Interim City Attorney

RECOMMENDED ACTION: That the City Council approve Special Allocation for expenses incurred by outside counsel relative to the Environmental Abatement Program litigation in the amount of \$196,951.05.

BACKGROUND INFORMATION: Over the past three months, the City hired Barger & Wolen to begin the review of the Envision Law Group invoices, and assist the Mayor and the Interim City Attorney with the various aspects of that assignment. The City Council also hired the law firm of Kronick, Moskovitz, Tiedemann & Girard to assist with the ongoing Environmental Abatement litigation and other miscellaneous litigation cases that are presently active and perform some of the duties of the Deputy City Attorney as required.

The following is a list of invoices that are currently outstanding and need to be approved for payment.

1)	Barger & Wolen	\$ 94,009.49
2)	San Francisco Legal Copy & Imaging (Copy Costs incurred by Barger & Wolen of Envision Invoices for Period February 1999 through June 2002	\$ 2,004.98
3)	Kronick, Moskovitz, Tiedemann & Girard	<u>\$100,936.58</u>
	Total	\$196,951.05

FUNDING: Water Fund 183453.7323

Vicky McAthie
Vicky McAthie, Finance Director

D. Stephen Schwabauer
Interim City Attorney

DSS/dn

APPROVED: _____
H. Dixon Flynn, City Manager



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Discussion and Direction Regarding Notice of Intention to Circulate Petition Submitted March 30, 2004 to the City of Lodi City Clerk's Office by Elizabeth M. Fiske, Glenda Hesseltine, and Walter Pruss

MEETING DATE: April 12, 2004

PREPARED BY: City Attorney, Interim

RECOMMENDED ACTION: Discussion and Direction Regarding Notice of Intention to Circulate Petition Submitted March 30, 2004 to the City of Lodi City Clerk's Office by Elizabeth M. Fiske, Glenda Hesseltine, and Walter Pruss.

BACKGROUND INFORMATION: Attached for Council's information is a copy of the Notice of Intention to Circulate Petition Submitted March 30, 2004 to the City of Lodi City Clerk's Office by Elizabeth M. Fiske, Glenda Hesseltine, and Walter Pruss. Subsequent to receipt of the Notice, City staff reviewed the document and identified a few areas of concern which they will discuss during the Special Council meeting.

FUNDING: Not Applicable

Stephen Schwaubauer
City Attorney, Interim

Attachment

JK/sl

APPROVED: _____
H. Dixon Flynn, City Manager



MEMORANDUM
Office of the Lodi City Clerk

TO: City Council
Interim City Attorney
City Manager
Community Development Director

FROM: Susan J. Blackston, City Clerk

DATE: March 30, 2004

SUBJECT: NOTICE OF INTENTION TO CIRCULATE PETITION

The attached Notice of Intention to Circulate Petition was filed in my office on March 30. Payment of the \$200 fee for processing an initiative petition was also received in accordance with Resolution 98-28.

Pursuant to California Elections Code Section 9203 (a) the City Attorney has 15 days from the date the Notice of Intention was filed with the City Clerk to prepare a ballot title and summary. The proponents will then publish the notice, title, and summary in Lodi News Sentinel, after which circulation of the petition can commence. Signatures from a minimum of 10% of the registered voters in the City of Lodi must sign the petition for it to qualify for certification by the San Joaquin Registrar of Voters. As was reported to the Secretary of State's Office on March 2, 2004, the total number of registered voters in the City of Lodi was 26,332 (10% = 2,634).

Ms. Susan Blackston
City Clerk, City of Lodi
221 W. Pine St.
Lodi, CA 95240

RECEIVED

2004 MAR 30 AM 11:09

March 30, 2004

CITY CLERK
CITY OF LODI

To the Honorable Clerk of the City of Lodi:

Below is our notice of intention to circulate an initiative petition. We request that a title and summary of it be prepared by the city attorney. We further petition you to submit this measure to the city council for adoption without change or submission to the voters of the City of Lodi at the earliest regular or special election for which it qualifies.

NOTICE OF INTENTION TO CIRCULATE PETITION

NOTICE IS HEREBY GIVEN by the persons whose names appear hereon of their intention to circulate the petition within the City of Lodi. The petition proposes to amend the City of Lodi's zoning ordinance, Lodi Municipal Code, Title 17, to impose a maximum size limitation of 100,000 square feet upon all large-scale retail stores.

A statement of reason for the proposed action as contemplated is as follows: Lodi is confronted with increasingly larger scale retail stores and increasingly larger scale commercial development projects. These projects, and the likelihood of similarly large-scaled projects in the future, have raised concerns based on the hidden costs, economic, environmental, and social, these may have on the City of Lodi.

These include:

1. Costs of adverse traffic congestion and infrastructure,
2. Loss of trees, open space and farmland,
3. Displacement of locally owned small businesses,
4. Erosion or even elimination of Lodi's unique "small town atmosphere,"
5. Potential for urban blight,
6. Disruption of the City's policy to support the downtown as a retail and cultural area,
7. Pollution of air and water,
8. Increase in crime, and
9. Tendency for city services to cost more than income generated by tax revenue.

In order to protect the city from the adverse effects caused by the proliferation of large-scale retail stores and commercial projects, the measure provides as follows:

Lodi's Sensible Scale and Character Initiative

The people of the City of Lodi do hereby ordain as follows:

Section 1. Purpose and Findings.

A. **Purpose.** The purpose of this Initiative is to protect and preserve the existing community character and fabric, and promote the continuation of neighborhood/community commercial centers and the downtown commercial center. Also, the purpose of this Initiative is to ensure that the purposes and principles set forth in the City of Lodi's General Plan are fully considered by establishing sensibly scaled retail development and maintenance of the City of Lodi's unique character. This action recognizes that large-scaled retail stores affecting the city shall be subject to a public vote.

B. **Findings.** The people of the City of Lodi find that regulating size and bulk of retail stores, through this initiative, promotes the welfare, economy, and quality of life of the residents of Lodi, based upon the following:

1. Regulating Scale of Retail Stores Protects the Unique Character and Quality of Life in Lodi.

An important component of the City of Lodi is maintaining its unique character. Lodi's small-town and rural qualities are a valuable trait of the town. Large-scale retail stores detract from the community's character and aesthetics. Large retail stores are usually located some distance away from residential neighborhoods because they require large sites, which are usually found only in zones outside of the downtown area. Large-scale retail often consists of long, plain facades, a sea of parking, and sparse landscaping.

The unique character of the City of Lodi and the quality of life enjoyed by city residents and visitors depend on the protection of the small-town and rural qualities. The protection of such attributes aids the continued viability of the city and brings mental and physical benefits from the broad protection of Lodi residents' quality of life.

2. Strengthening Lodi's Economy.

It is important to have sensible scale retail stores in order to continue to strengthen and sensibly develop Lodi's existing economy. Lodi has a number of shopping centers providing the community with merchandise and services. Large-scale retail stores affect existing shopping centers by causing the existing stores to go out of business, thus destabilizing the shopping centers, and leaving empty, boarded-up buildings, which increase crime and blight. The surrounding area loses the merchandise and services offered by the existing businesses. Sometimes a large-scale retail company will close down an existing store, and replace it with a superstore, which also results in a large, empty store.

3. Ensuring Adequate Public Services for the City.

There are negative impacts to not having sensibly scaled retail stores, including safety. Large-scale retail stores require significantly higher commitment of police, fire, and public safety resources compared to smaller neighborhood stores. Usually large-scale stores fail to provide provisions for the pedestrians entering the store.

It is often dangerous even to walk from the parking lot to the entrance of the store, with cars driving and maneuvering in the very large parking area. The larger stores usually involve longer trips and generate more traffic in a concentrated area, and thus require improved street capacity in their immediate neighborhoods. The elderly, handicapped, and poor may not have access to larger retail stores because they are located at greater distances away from their neighborhoods due to the large land acquisition requirements of the larger retail stores.

C. Effect of Initiative. To achieve the above-stated purposes, this Initiative would amend the City of Lodi's Ordinance to establish a limit on large-scale retail stores that exceed 100,000 square feet of gross floor area. Also it would require that any project proposal that exceeds 100,000 square feet of gross floor area be subject to a public vote for approval.

Exhibits. This Initiative does not have any exhibits attached but relies upon the design standards for large-scale stores recently adopted by the City.

Section 2. Zoning Ordinance Amendments.

Whereas, the Lodi General Plan establishes a policy framework that forms the City of Lodi's strategy for retail; and

Whereas, the Lodi General Plan recognizes three distinct types of shopping centers – neighborhood/community commercial; general commercial; and downtown commercial; and

Whereas, the Lodi General Plan establishes policies encouraging promoting downtown Lodi as the City's social and cultural center and an economically viable retail and professional office district, it promotes locating future commercial retail in downtown Lodi and preserving the existing small-town scale and character of Lodi; and

Whereas, General Plan policies promote and encourage vital neighborhood commercial districts that are evenly distributed throughout the city so that residents are able to meet their basic daily shopping needs at neighborhood shopping centers; and

Whereas, the California Government code also provides that in order for the ordinance to be consistent with the General Plan, the various land uses authorized by the ordinance should be compatible with the objectives, policies, general land uses, and programs specified in the General Plan; and

Whereas, the Lodi zoning ordinance (Title 17 of the Lodi Municipal Code) has not kept pace with the evolution of the retail sector and fails to adequately distinguish the size, scale and scope of various retail activities; and

Whereas, an emerging national trend exists toward increasing the size of retail outlets and the diversity of products offered at such large-scale discount stores and discount superstores; and

Whereas, the establishment of discount stores in Lodi is likely to negatively impact the vitality and economic viability of the city's neighborhood community commercial and downtown commercial centers by drawing sales away from traditional retail stores located in these centers; and

Whereas, discount superstores adversely affect the viability of small-scale, pedestrian-friendly neighborhood commercial areas, contributing to blight in these areas; and

Whereas, given the city's current population of 60,000, there are currently adequate retail stores to support the

market for large-scale retail; and

Whereas, the proposed amendments to the zoning ordinance are intended to preserve the city's existing neighborhood-serving shopping centers that are centrally located within the community; and

Whereas, this distribution of shopping and employment creates a land use pattern that reduces the need for vehicle trips and encourages walking and biking for shopping, services, and employment; and

Whereas, a significant concern with large retail discount stores is that they combine neighborhood-serving retail in a more remote, regional-serving retail center which would result in the decline of neighborhood-serving retail stores by consolidating their activity in a single, outlying location; and

Whereas, the remote location of large retail discount stores means that local residents are forced to drive further for basic services such as groceries, and are forced to take longer and more frequent traffic trips to the regional commercial center to satisfy basic everyday needs, increasing overall traffic and overburdening streets that were not designed to accommodate such traffic; and

Whereas, the proposed amendments to the zoning ordinance, by limiting large-scale retail stores, will prevent the negative transportation and related air quality impacts that establishment of such stores is likely to have; and

Whereas, numerous local jurisdictions in the country and the State of California, taking all of the above considerations in mind, have enacted ordinances on new large retail stores over a certain size that either completely prohibit new retail stores over a certain size or require special impact studies; and

Whereas, California jurisdictions that have recently enacted such regulations to help sustain the vitality of small-scale, more pedestrian-oriented neighborhood shopping districts include the Cities of Turlock, Santa Maria, San Luis Obispo, Arroyo Grande, Oakland and Martinez; and

Whereas, a potential discount superstore would directly contravene the approach the city's General Plan established for retail; and

Whereas, the proposed regulations will place stricter controls on the establishment of, or conversion to large-scale stores and would prevent a large-scale store with potential negative environmental impacts from being established in Lodi, but will not itself generate environmental impacts or necessitate environmental review; and

Whereas, the adoption of these regulations does not approve any development project nor does it disturb the physical environment either directly or indirectly as the regulations modify the limitations of land use by limiting large-scale retail stores that exceed 100,000 square feet of gross floor area and require such projects be approved by the citizens' votes; and

Whereas, requiring voter approval of land use development of large-scale retail stores that exceed 100,000 square feet of gross floor area will ensure opportunities for full public participation in decisions affecting future land use, quality of life, and character of the City of Lodi.

NOW, THEREFORE, the City of Lodi hereby ordains that:

The Lodi Zoning Ordinance (Title 17 of the Lodi Municipal Code) is amended by the addition of Section

17.36.035, which shall read as follows:

"Retail structures in the C-1 district shall not exceed 100,000 square feet in gross floor area unless approved by public vote. For the purposes of this subsection, the term "gross floor area" shall include outside retail areas."

The Lodi Zoning Ordinance (Title 17 of the Lodi Municipal Code) is further amended by the addition of Section 17.39.035, which shall read as follows:

"Retail structures in the C-2 district shall not exceed 100,000 square feet in gross floor area unless approved by public vote. For the purposes of this subsection, the term "gross floor area" shall include outside retail areas."

The Lodi Zoning Ordinance (Title 17 of the Lodi Municipal Code) is further amended by the addition of Sections 17.36.036 and 17.39.036 which shall read as follows:

"Nothing in this Chapter shall give the City Council the authority to grant a variance from the provisions of 17.36.035 and 17.39.035 relating to the maximum size of structures in the C-1 and C-2 Districts."

Section 3. Implementation.

A. Effective Date. As provided in Elections Code section 9217, this Initiative shall take effect ten days after the date on which the election results are declared by the City Council. Upon the effective date of this Initiative, the provisions of Section 2 of this Initiative are hereby inserted into the City of Lodi's Planning and Zoning Code as an amendment thereof.

B. Interim Amendments. The City of Lodi's Zoning Code in effect at the time the Notice of Intent to circulate this Initiative was submitted to the City of Lodi Elections Official on March 30, 2004 ("Submittal Date"), and the ordinances as amended by this Initiative, comprise an integrated, internally consistent and compatible statement of policies for the City of Lodi. In order to ensure that the City of Lodi's Planning and Zoning remains an integrated, internally consistent and compatible statement of policies for the City as required by state law and to ensure that the actions of the voter in enacting this Initiative are given effect, any provision of the Planning and Zoning Code that is adopted between the Submittal Date and the date that the Planning and Zoning Code is amended by this measure shall, to the extent that such interim-enacted provision is inconsistent with the Planning and Zoning Code provisions adopted by Section 2 of this Initiative, be amended as soon as possible and in the manner and time required by state law to ensure consistency between the provisions adopted by this Initiative and other elements of the City's Planning and Zoning Code.

C. Other City Ordinances and Policies. The City of Lodi is hereby authorized and directed to amend the Planning and Zoning Code, other ordinances, the General Plan, and policies affected by this Initiative as soon as possible and in the manner and time required by any applicable state law to ensure consistency between goals, objectives and policies adopted in Section 2 of this Initiative and other elements of the City's Planning and Zoning Code, General Plan, all community and specific plans, and other City ordinances and policies.

Section 4. Exemptions for Certain Projects

This Initiative shall not apply to any of the following: (1) any project that has obtained as of the effective date of the Initiative a vested right pursuant to state or local law; (2) any land that, under state or federal law, is beyond the power of the local voters to affect by the initiative power reserved to the people via the California Constitution

Section 5. Elections.

Except for the renewal or repeal of this Article, any direct or indirect costs to the City of Lodi caused by the elections mandated by this Article shall be borne by the applicants for the large-scale development project in excess of 100,000 square feet, unless otherwise prohibited by state law.

Elections mandated by this Article shall be consolidated with other elections, whenever feasible. Different proposals may appear on the same ballot at the same election provided that each separate proposal affecting a discrete property or development project shall be submitted to the voters as a separate measure.

Section 6. Severability and Interpretation.

This Initiative shall be interpreted so as to be consistent with all federal and state laws, rules, and regulations. If any section, sub-section, sentence, clause, phrase, part, or portion of this Initiative is held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Initiative. The voters hereby declare that this Initiative, and each section, sub-section, sentence, clause, phrase, part, or portion thereof would have been adopted or passed even if one or more sections, sub-sections, sentences, clauses, phrases, parts, or portions are declared invalid or unconstitutional. If any provision of this Initiative is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Initiative that can be given effect without the invalid application. This Initiative shall be broadly construed in order to achieve the purposes stated in this Initiative.

Section 7. Amendment or Repeal.

Except as otherwise provided herein, this Initiative may be amended or repealed only by the voters of the City of Lodi.

Elizabeth M. Fiske

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